THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.27798 of 1995

ORAL ORDER:

This writ petition is filed challenging the award passed by the first respondent-Labour Court in I.D.No.287 of 1992 dated 7.4.1993, wherein the removal order passed by the second respondent was confirmed.

It appears, the petitioner was working as Driver under the control of second respondent. While so, the Traffic Inspector No.II of Kamareddy Depot reported that the petitioner was absent from 20.2.1987 till 8.4.1987 without sanction of leave. On the basis of the report of the Traffic Inspector, charge sheet was issued to the petitioner and the petitioner submitted his explanation stating that he fell ill and was taking treatment therefore, he could not attend to duty. Not satisfied with the explanation given by the petitioner, a domestic enquiry was ordered and thereafter, the petitioner was removed from service.

According to the petitioner, he went on leave from 10.2.1987 and thereafter he applied for leave on the advice of the Doctor and instead of granting leave, the second respondent has removed him from service, which is arbitrary and illegal. Therefore, he raised an Industrial Dispute before the first respondent-Labour Court.

Before the Labour Court, the petitioner has filed a memo under Section 11-A of the Industrial Disputes Act, 1947 on 16.5.1995 indicating that he is not intending to challenge the validity of the enquiry, therefore the Labour Court has taken up the matter on merits. It was found that the petitioner was absent for 58 days without sanction of leave. Though the petitioner was contending that he was seriously ill and the doctor advised him to take bed rest for two months, no evidence of any kind was placed before the second respondent to that effect. Even before the Labour Court, the petitioner did not file any medical certificate issued by a competent authority. Therefore, the first respondent-Labour Court disbelieved the statement of the petitioner that he was ill and advised for

bed rest. Further, the endorsement on Ex.A2 shows that the petitioner was not granted any leave. Ex.A.9 is the statement of the Traffic Inspector recorded during the course of enquiry, which shows that the petitioner was absent for 58 days. The petitioner, of course, did not dispute his absence, but tried to justify his absence on the ground of illness and except this bare assertion of the petitioner, there is no evidence to show that he was actually sick. Under those circumstances, the Tribunal held that the petitioner was intentionally absent from duty for a continuous period of 58 days without sanction of leave, therefore, the punishment of removal from service for unauthorized absence is justified and thus, dismissed the claim. Aggrieved by the same, the present writ petition is filed.

The learned counsel for petitioner strenuously contended that the first respondent failed to see that the order of the second respondent removing the petitioner from service is against the principles of equity and natural justice. Further, the first respondent has not gone into the correctness of the medical certificates produced by the petitioner before the second respondent. The second respondent committed error in removing the petitioner from service without affording him an opportunity of hearing, which fact had missed the attention of the Labour Court and even otherwise, the punishment of dismissal is arbitrary and illegal.

On the other hand, the learned counsel for the second respondent supported the impugned award and submitted that the Labour Court has not committed any error calling for interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned award and other material made available on record.

Though many grounds have been raised stating that the enquiry was not properly conducted etc., the petitioner himself has filed a Memo under Section 11A of the Industrial Disputes Act, 1947 before the Labour

Court stating that he is not challenging the validity of the enquiry conducted by the management and requested the Labour Court to proceed with the matter on merits. Under those circumstances, the Labour Court has rightly gone into the merits of the case and even at this stage, the petitioner did not produce any medical certificate, therefore, the Labour Court has rightly dismissed the claim of the petitioner. I am of the opinion that the impugned award passed by the first respondent-Labour Court does not call for any interference of this Court under Article 226 of the Constitution of India. The writ petition is devoid of merits and liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

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C.V.RAMULU, J

Date: 31.10.2006

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.27798 of 1995

31.10.2006

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.27798 of 1995

Date: 31st October, 2006

Between:

Abdul Gaffar

.. Petitioner

And

The Presiding Officer,
Additional Industrial Tribunal-cum-
Additional Labour Court, Hyderabad & another.

.. Respondents